BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Opinion of the District Court appears 58 Fed. Supp. 869. The Opinion of the Circuit Court of Appeals (Sixth Circuit), has not yet been reported but will be found R. 86 et. seq. No Opinion was filed upon denial of petition for rehearing.

JURISDICTION

The date of the decree to be reviewed is June 25, 1945 (rehearing denied 23rd day of July, 1945). Jurisdiction of this court is invoked because Appellant has been denied that due process and equal protection of the law which the 14th and 5th Amendments guarantee him and all other citizens and also denied a hearing on civil rights as provided by U.S.C.A. Title 28, Sec. 41 (14).

The cases sustaining the jurisdiction are as follows:

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Clyde Wilson Summers, Petitioner, U. S. Supreme Court Advance Opinions, Volume 89, No. 17, Page 1304, decided June 11, 1945.

Barbier v. Connolly, 113 U. S. 27, 28 L. Ed. 923;

Douglas v. Jeannette, 319 U. S. 157; 87 L. Ed. 1324;

Hague v. Committee for Industrial Organization, 307 U. S. 495; 83 L. Ed. 1423;

Fleenor v. Hammond, 116 Fed. 2nd, 982;

Truax v. Corrigan, 257 U. S. 312; 66 L. Ed. 254.

This action is therefore brought under the above authority to secure for plaintiff his civil rights of a hearing in Court and of equal protection of the laws.

The constitutional and statutory provisions which sustain jurisdiction are:

(A) The 14th Amendment to the Constitution of the United States, Section 1 whereof provides:

> "* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Also the 5th Amendment, which provides—

> "No person shall * * * be deprived of life, liberty or *property* without due process of law; * * *"

(B) The jurisdiction of the District Court to hear this case is directly established by the Civil Rights Act, United States Code Ann., Title 28, Sec. 41 (14):

"Suits to redress deprivation of civil rights. Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, 'regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States.' (R. S. §563, par. 12, §629, par. 16; Mar. 3, 1911, c. 231, §24, par. 14, 36 Stat. 1092.)"

(C) The exception contained within Subdivision 1 of Sec. 41 of Title 28, U.S.C.A., where after reference is made to the jurisdictional amount of $3,000, it is specifically stated:

"The foregoing provisions as to the sum and value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section." • • • Subdivision 14, Suits to Redress Deprivation of Civil Rights above quoted is one of the succeeding paragraphs.

(D) Section 240 (A) of the Judicial Code (28 U.S.C. S.347).

STATEMENT OF THE CASE

The case has already been stated in the preceding petition under the heading "Summary Statement of Matter Involved" (ante, pp. 2-5), which is hereby adopted and made part of this brief, without repeating the same.

This case therefore squarely presents to the court the constitutional question whether a person who has been granted the additional status of an attorney, who is a member of this as well as all other Federal and Michigan State Courts, and who has practiced his profession for upwards of forty-six years without the slightest breath of criticism, and who took a bankrupt estate, paid the court the price for certain assets unuseable in that court, developed and sold the same at his own cost, expense and liability, and was thereby enabled to render the estate solvent, pay all of its debts and cost of administration in full, and to turn assets and money into a crippled children's fund in the amount of $400,000.00, all of which acts were approved and conferred by final, binding and unappealed orders of the Probate Court and decrees of the Circuit Court, is now, as a citizen of the United States and of Michigan, to be denied a hearing in a court of competent jurisdiction as to his rights and liabilities not only to the estate but to the hundreds of persons to whom he sold lots and gave deeds with covenants of warranty, exactly as any citizen has the right to do.

SPECIFICATION OF ERRORS

The lower court erred in holding that the issuance of a writ by the State Supreme Court prohibiting appellant from further proceedings in the State Court upon a bill of complaint filed for a declaration of rights seeking a determination of the legal scope and effect of certain orders and decrees, is not in violation of appellant's rights as a citizen under the 14th and 5th Amendments and does not present a federal question over which the District Court has jurisdiction.

The lower court erred in holding the complaint did not state a federal question where the cause of action stated a case within the intent and purview of the Federal Civil Rights Statute, U.S.C.A. Title 28, Sec. 41 (14).

The lower court erred in holding that where a complaint is grounded upon the Federal Civil Rights Statute, U.S.C.A. Title 28, Sec. 41 (14) it is necessary to specifically allege that $3,000 or more is involved in order to give the court jurisdiction.

The lower court erred in holding in reference to Title 28, U.S.C.A. Sec. 41, Subdivision 14, that plaintiff's claim thereunder is based on his right to practice law as a claimed property right, whereas the court should have held that whether or not the right to practice law is a property right is not a question in the case and that plaintiff as a citizen has stated a case which comes within the exception found in Subdivision 14 of Sec. 41, U.S.C.A., and within the 14th Amendment to the Federal Constitution, because he had been denied his civil rights of a hearing in open court.

ARGUMENT

The lower court in arriving at its determination that the complaint did not state a federal question authorizing the District Court to take cognizance of appellant's action erred in both its findings of fact and conclusion of law. Some errors of fact appear in the aforesaid Specifications of Error.

Additional Errors of Findings of Fact are as follows:

On Page One, the lower court found that "the Michigan Court entered a decree validating the title of any conveyance executed by plaintiff," whereas the court should have found that "the Michigan court entered a decree determining title to be in the plaintiff free and clear of any claim on the part of the Cummings Estate or any other person."

The lower court held that under the State Constitution, the Supreme Court of the State had general superintending control with the power to issue writs over all inferior courts and therefore plaintiff was not denied due process of law and equal protection of the law, whereas the Court should have found that the Supreme Court of the State has the power to issue writs of prohibition but this power is not an issue in the case, the issue being the violence done the 14th and 5th Amendments of the Federal Constitution and the Civil Rights Statute by the issuance of said writ.

The Court found the complaint "fails to show that plaintiff was denied any reasonable opportunity to make his defense before the Supreme Court," whereas the Court

should have found that "the plaintiff has not had an opportunity to make his defense before the Supreme Court, or any other court, because the Supreme Court of the State denied him that right when it prohibited him from exercising his rights as a citizen of having the benefits of the State Court Declaratory Judgment proceedings."

The Court in sustaining the motion to dismiss held in substance that "plaintiff had not been denied due process," whereas the Court should have found that "the question of whether or not the plaintiff has had due process is a matter to be decided on the merits and on consideration of the motion to dismiss it is sufficient if the complaint sufficiently alleges that there has been a denial of due process."

Having in mind the aforesaid errors of fact, we now respectfully call the Court's attention to erroneous conclusions of law.

The lower court erroneously held that the decision of this court in *Hurwitz v. North,* 271 U. S., 40-42; 70 L. Ed. 818, is applicable to the case at bar. The *Hurwitz* case involved the right of a physician to retain his license to practice medicine and did not in any way affect the physician's right as a citizen. Moreover, full hearing was had in the courts of Missouri as to the right to practice medicine and during said full hearing the rights, duties and liabilities of a citizen were not involved. That obviously is not the case at bar.

The lower court erred by overlooking the Federal statutory exception to the necessity of including in the complaint an allegation that $3,000 is involved, which exception is specifically stated in Subdivision 14, Section 41, Title 28

of U.S.C.A. Under the last mentioned statute and said exception, the $3,000 allegation is not necessary where civil rights are involved, and this Court has so held in *Douglas v. Jeannette,* 319 U. S. 157; 87 L. Ed. 1324, and in other cases. In the last mentioned *Douglas* case, this court, citing *Hague v. The Committee of Industrial Organization,* 307 U. S., 495; 83 L. Ed. 1423, 1432-1436, 1443-1446, 59 S. Ct. 954, held that:

> "The district courts of the United States are given jurisdiction by 29 U.S.C.A., Sec. 41 (14), 7 F.C.A. Title 28, Sec. 41 (14) over suits brought under the Civil Rights Act without the allegation or proof of any jurisdictional amount."

(See also *Ghadiali v. Delaware State Medical Society,* 48 F. Supp. 789.)

The lower court's citation of the said *Douglas* case is 130 Fed. (2), 652, wherein the Circuit Court of Appeals held:

> "It follows that if the complaint sufficiently alleges deprivation of these rights without due process of law the jurisdiction of the district court must be sustained, since jurisdiction to hear a suitor's complaint depends upon what he states his complaint to be and not upon whether at the hearing he is able to establish its merit. For were we to hold that jurisdiction exists only if the proven facts justify the conclusion that there has been a deprivation of liberty without due process of law it would necessarily follow that in every such case the court would have to hear and decide the merits of the controversy before deciding whether it had power to hear and decide the merits. This would be a manifest absurdity."

Applying the aforesaid statement in the *Douglas* case to the case at bar it is at once apparent that the lower court erred in its determination that appellant had had due process and equal protection of the laws, because the court should have limited itself to the determination of whether or not the complaint on its face stated a case over which the Court had jurisdiction.

In the *Douglas* case, Jehovah's Witnesses had in Pennsylvania been prosecuted and convicted under an ordinance of the city of Jeannette forbidding them to solicit without procuring a license. They filed a bill of complaint in the U. S. District Court for Western Pennsylvania to restrain these criminal prosecutions. The District Court accepted jurisdiction and after a hearing held the ordinance invalid, (39 F. Supp. 32); the Court of Appeals for the Third Circuit sustained the jurisdiction of the District Court, but reversed on the merits—130 F. 2, 652; this court upheld the jurisdiction of the District Court, using the following language—page 162:

> "The particular provision of the Constitution on which Petitioners rely is the Due Process Clause of the Fourteenth Amendment, violation of which the dissenting judge below thought was not sufficiently alleged to establish a basis for relief under the Civil Rights Act. But we think this overlooks the special relationship of the Fourteenth Amendment to the rights of freedom of speech, press, and religion guaranteed by the First. We have repeatedly held that the Fourteenth Amendment has made applicable to the states the guaranties of the First. *Schneider v. Irvington*, 308 U. S. 147, 160, note 8, 84 L. Ed. 155, 164, 60 S. Ct. 146, and cases cited: *Jamieson v. Texas*, 318 U. S. 413, ante, 869, 63 S. Ct. 669. Allegations of fact sufficient to show depriva-

> tion of the right of free speech under the First Amendment are sufficient to establish deprivation of a constitutional right guaranteed by the Fourteenth *and to state a cause of action under the Civil Rights Act, whenever it appears that the abridgment of the right is effected under color of a state statute or ordinance.* It follows that the bill, which amply alleges the facts relied on to show the abridgment by criminal proceedings under the ordinance, sets out a case or controversy which is within the adjudicatory power of the district court." (Emphasis supplied).

The lower court, in consideration of the facts in the case at bar, erred in its conclusion of law by disregarding the application of the Civil Rights Act referred to as aforesaid by this Court in the *Douglas* case.

The lower court erred in holding (R. 90) that—

> "The complaint that the issuance of the writ of prohibition was erroneous falls far short of a challenge that due process was lacking in the proceedings which led up to it. See *American Ry. Express Co. v. Commonwealth of Kentucky,* 273 U.S. 269; *Arrowsmith v. Harmoning,* 118 U.S. 194, 195; *Iowa Central Ry. Co. v. Iowa,* 160 U.S. 389, 393; *Tracy v. Ginzberg,* 205 U.S., 170, 177; *Bonner v. Gorman,* 213 U.S. 86; *Central Land Co. v. Laidley,* 159 U.S. 112; *McDonald v. Oregon R. R. & Nav. Co.,* 233 U.S. 665, 669."

Examination of each of the last mentioned seven cases relied upon by the lower court, discloses that in every case answers were filed and a hearing had in open court. In not any of said cases was there the arbitrary and capricious exercise of power by the State Court complained of in the case at bar. The issuance of a writ of prohibition

denied the appellant a hearing in open court. It is admitted that the only hearing ever had in the State Court was the argument in the Michigan Supreme Court upon petition of the State Bar for a writ of prohibition. The writ of prohibition was directed to the Circuit Judge. (*State Bar of Michigan v. Ingham Circuit Judge,* 307 Mich. 393.)

We have no quarrel with the principle of law stated in the *McDonald* case, supra, as follows:

> "It is elementary and needs no citation of authorities to show that the due process clause of the Fourteenth Amendment does not control methods of State Procedure or give jurisdiction to this Court to review mere errors of law alleged to have been committed by a State Court in the performance of its duties within the scope of its authority concerning matters non-Federal in character."

The case at bar is not an attempt to review mere errors of law in the State Court, and certainly it cannot be said that the denial of appellant's civil rights is non-Federal in character.

In the *American Railway* case, supra, this court held that "the action of the court followed a fair hearing."

In the *Iowa Central Railway* case, supra, cited by the lower court and quoted in appellees' brief, the Court held:

> "But it is clear that the Fourteenth Amendment in no way undertakes to control the power of the State to determine by what process legal rights may be exercised or legal obligations be enforced, *provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided.*" (Emphasis supplied).

It must be conceded that the issue of the legal scope and effect of the said final orders and decrees were not and could not be heard, considered or determined in the State prohibition proceedings.

Instead of being authority for the lower court's holding, this case and others relied on by the lower court supports appellant's contention that he was denied a fair opportunity to be heard upon the issues set forth in his declaratory proceedings.

The defendants are without jurisdiction to consider and determine the legal scope and effect of the state court's final orders and decrees.

A question may arise in the Court's mind as to why appellant could not have a fair opportunity to be heard before the State Bar Committee upon the legal issues involved in the Bill of Complaint filed in the State Court. The answer is that the State Bar Committee is entirely devoid of jurisdiction to pass upon the legal scope and effect of these orders and decrees. Furthermore, even if this Committee had jurisdiction, it is apparent from the Record that they have already interpreted such decrees contrary to the express wording therein contained, have openly stated that the sales conducted pursuant thereto were "wash sales" and that they intended to disregard such orders and decrees. Counsel for all defendants in his argument before the Circuit Court of Appeals adopted this as the deliberate position of all the defendants by stating to the court that the sales pursuant to said decrees were mere "conduit" sales.

Additional authority sustaining the jurisdiction of the District Court is found in re:

Clyde Wilson Summers, Petitioner, Volume 89, No. 17, Page 1304, U. S. Supreme Court Advance Opinions, decided June 11, 1945;

Fleenor v. Hammond, 116 Fed. (2), 982;

Truax v. Corrigan, 257 U. S. 312, 334, 66 L. Ed. 254;

Smith v. O'Grady, 312 U. S. 328, 85 L. Ed. 859;

Barbier v. Connolly, 113 U. S. 27, 28 L. Ed. 923.

The Summers case, supra, was a case involving civil rights and this court granted certiorari on a showing that the Supreme Court of Illinois had denied petitioner's request to practice law in that state. Mr. Justice Reed in the majority opinion held:

> "Petitioner challenges here the right of the Supreme Court to exclude him from the bar under the due process clause of the Fourteenth Amendment to the Constitution of the United States which secured to him protection against state action in violation of the principles of the First Amendment. *Because of the importance of the tendered issue in the domain of civil rights, we granted certiorari.*—U. S.—, ante, 31, 65 S. Ct. 52." (Emphasis supplied.)

In the *Fleenor case,* Fleenor, after serving part of his sentence was granted a pardon by the Governor of Kentucky, conditioned upon the right of the Governor to revoke the same. A subsequent Governor, by an ex parte order and *without any hearing,* revoked the pardon and directed that Fleenor be rearrested and returned to the reformatory, to serve the remainder of his sentence. Fleenor insti-

tuted habeas corpus proceedings in the Oldham County Court of Kentucky, but before the petition could be heard the Attorney General sought and obtained from the Court of Appeals a writ prohibiting the County Court from proceeding with the matter. Fleenor then filed his application for a writ of habeas corpus in the U. S. District Court upon the ground that the revocation of his pardon *without a hearing*, constituted a denial to him of due process of law, as guaranteed by the 14th Amendment. The Court of Appeals held such revocation to be violative of the 14th Amendment, using the following language:

> "It is our conclusion that the petitioner's right to his freedom under the terms of the pardon could not be revoked without such hearing as is the generally accepted prerequisite of due process, if the exercise of such power by the Governor is challenged by unequivocal allegations that the petitioner had complied with the conditions of the grant."

Thus, under different clauses covered by the 14th Amendment, Federal Courts have held that the denial by a state court of a constitutional right such as the right to a hearing or the equal protection of the law, infringes the guaranties of the 14th Amendment.

In the *Truax* case above cited, an employer operating a restaurant filed his suit against his striking employees and others to enjoin them from picketing his place of business and by libelous utterances and unlawful methods persuading his patrons to leave him. In Arizona equity had general jurisdiction of such a case, but a statute passed in 1913 forbade the issuance of a restraining order solely in a controversy between employers and employees of a labor dis-

pute. Thus this statute took away from employers the rights which were available to all citizens. The Supreme Court of Arizona held against the employer, but the Supreme Court of the United States reversed and remanded the case. The case was based upon the 14th Amendment and the opinion enunciates the law, p. 333, as follows:

> "Mr. Justice Matthews, in *Yick Wo v. Hopkins*, 118 U. S. 356, 369, 30 L. Ed. 220, 226, 6 Sup. Ct. Rep. 1064, speaking for the court of both the due process and equality clause of the 14th Amendment, said:
>
> > 'These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color or of nationality; *and the equal protection of the laws is a pledge of the protection of equal laws.*'
>
> "(334). The accuracy and comprehensive felicity of this description of the effect of the equality clause are shown by the frequency with which it has been quoted in the decisions of this court."

and on p. 334:

> "The 14th Amendment as this court said in *Barbier v. Connolly*, already cited, intended 'not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but *that equal protection and security should be given to all under like circumstances, in the enjoyment of their personal and civil rights;* that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; *that they should have like access to the courts of*

> *the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts;* that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one (335) than are laid upon others in the same calling and condition, and that, in the administration of criminal justice, no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses." (Emphasis supplied.)

In *Smith v. O'Grady* (1941), 312 U. S. 329; 85 L. Ed. 859, Smith was convicted and sentenced upon his plea of "guilty", induced as he claimed by fraud of the prosecuting officers in misleading him as to the character of the offense and the possible term of imprisonment thereunder; subsequently he made application to the Nebraska state courts for a hearing under a writ of *habeas corpus,* alleging these facts; *without giving petitioner an opportunity to prove his allegation,* his application was dismissed; motion for reconsideration was dismissed, all of which was affirmed by the Supreme Court of Nebraska, without opinion. This court, speaking through Mr. Justice Black, reversed this action of the Nebraska courts, using the following language:

> "* * * If these things happened, petitioner is imprisoned under a judgment invalid because obtained in violation of procedural guaranties protected against state invasion through the Fourteenth Amendment. The state court erroneously decided that the petition stated no cause of action. If petitioner can prove his allegations the judgment upon which his imprisonment rests was rendered in violation of due process and cannot stand."

A Michigan case in point, which we regret to state was not called to the attention of the lower court is *Templar v. State Board of Examiners of Barbers,* 131 Mich. 254. This case is important for two reasons:

First, it distinguishes between the right to practice a profession such as medicine or law and the rights of citizenship. Quoting the language of the court on page 257:

> "But the practice of medicine is no more an incident of citizenship than the practice of the trade of a barber. All persons are entitled to enjoy the equal protection of the law, and while it may be competent for the legislature, in the exercise of its police powers, to provide for an examination and licensing of barbers, * * * would it be contended that the legislature might provide that only white persons should be licensed?"

This is analagous to the case at bar for the lower court in substance held that because petitioner was a lawyer he was excluded from the rights of the State Declaratory Judgment procedure.

Second, in the *Templar* case the State Statute prohibited aliens from becoming barbers. The defendant Board of Examiners refused to receive plaintiff's application to become a barber on the ground that he was an alien. The court said again on page 255:

> "The question presented is whether the provision of the act which requires an applicant to be a citizen of the United States is valid. The relator contends that this provision is invalid, for the reason that it violates the provisions of the Fourteenth Amendment of the Constitution of the United States, which

declares that no State shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

"In *Barbier v. Connolly*, 113 U. S. 27, 31 (5 Sup. Ct. 357), Mr. Justice Field said:

> "The Fourteenth Amendment, in declaring that no State 'shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, *but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property.*".. (Emphasis supplied).

"In Re *Grice*, 79 Fed. 645, it was said:

> "By 'equal protection of the laws' is meant equal security under them to every one, under similar terms, in his life, his liberty, his property, and in the pursuit of happiness. *It not only implies the right of each to resort, on the same terms with others, to the courts of the country for the security of his person and property, the prevention and redress of wrongs, and the enforcement of contracts, but also his exemption from any greater burdens and charges than such as are equally imposed upon all others under like circumstances.*" (Emphasis supplied).

The State Court's denial to petitioner of a court hearing in the Declaratory Judgment proceedings was in direct contravention of the established constitutional law as stated in the *Templar* case, because he was denied the right to resort to the courts of the country on the same terms with others, and was thereby denied his guaranteed civil and constitutional rights.

PETITIONER HAS PROPERTY RIGHTS INVOLVED

The record discloses that appellant has executed hundreds of warranty deeds pursuant to said orders and decrees, wherein he guarantees good title, and also that he obligated himself for the making of improvements in the subdivided properties (R. 8, 11, 12, 14). That these involve property rights of appellant is beyond dispute.

SUMMARY

We do not dispute the right of the State by legislation to determine the venue of civil actions nor do we contend that the 14th and 5th Amendments are intended to deprive the State of its power to establish and regulate jurisdictional proceedings in the field of court procedure, including reasonable classifications. The case at bar is not one where the State law determines that the issues involved shall be tried in one forum instead of another. In this case and on this record the State Bar Committee is devoid of jurisdiction to hear and determine the questions upon which appellant was denied a hearing. Appellant's professional conduct

or the regulation of the same are not issues in the case at bar nor are they issues in the proceedings for the declaratory judgment either in the State or Federal Court. What we do contend is that appellant's fundamental rights which the 14th and 5th Amendments safeguard have been violated, namely, the right upon filing suit in the State Court to have equal rights in like cases and under like circumstances with all other persons. Every person, whether a lawyer or not, whether black or white, no matter what his station in life, must under the 14th and 5th Amendments be afforded a fair opportunity to be heard upon the issues of his court proceedings. We respectfully submit that the lower court was in error in its legal conclusions that appellant was afforded a fair opportunity to be heard upon the issues of his bill of complaint in the State Court. On the contrary, he was denied this right and relegated to a State

Bar Committee without jurisdiction to give him the relief prayed for.

We respectfully submit that for the reasons given and under the authorities cited, the petition for certiorari should be granted.

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